Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

<u>COMMENTS OF NEXTEL COMMUNICATIONS, INC.</u>

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SUMMARY

The fundamental assumption pervading this Second Further Notice of Proposed Rulemaking ("Second FNPRM") is that a complete overhaul of the current revenue-based Universal Service Fund ("USF") funding mechanism is necessary or warranted. The Federal Communications Commission, however, just adopted a set of "interim" measures that alter the manner in which telecommunications carriers contribute to USF, that curtail non-rate regulated carrier's ability to recover their USF costs from their customers, and that revamp end user billing methods. Rather than jumping to a wholly new assessment system, the Commission should allow sufficient time to determine first whether the newly imposed interim measures enhance the long-term viability prospects for universal service support. One obvious lesson from this proceeding thus far is that almost any change has associated costs and that many changes that appear simple can be impossible to implement without long lead time and significant effort by carriers.

Whether they are assessed on end users directly or indirectly, regulatory assessments, fees and taxes raise the cost of providing service. For services that are more elastically demanded, increases in any of these inputs translate into higher prices for services and an inevitable dampening of demand. It is well-documented and well-understood that local exchange services exhibit very inelastic demand, whereas Commercial Mobile Radio Service ("CMRS") customers are far more sensitive to increases in price. Thus, increases in the levels of USF assessments on all carriers on the same basis distort markets because they distort consumers' purchasing decisions. Simply treating all carriers alike adversely affects the economic well-being of CMRS carriers and their customers, while at the same time unfairly boosting the fortunes of incumbent LECs, including some that receive USF subsidies from

CMRS carriers. Continuing failure of the Commission's USF assessment policy to account for the differing economic welfare losses attributable to the differing elasticities of demand for various services remains a major flaw in the assessment program. Not only does it distort competition, it violates the statutory requirement that USF contributions be collected in an "equitable and non-discriminatory" manner.

While Nextel is not opposed, *per se*, to all forms of connection-based assessments, each of the Second FNRPM's connection-based proposals would further distort competition, would impose additional implementation costs on carriers, and would create additional confusion for customers. The Report and Order forced all providers to make a variety of changes, and adoption of any connection-based plan would force yet another round of costly modifications. USF assessment methodologies should never require CMRS carriers, and other carriers that operate in a competitive markets, to transform the way they do business. The case for further, wholesale change has not been made.

While each connection-based proposal is engineered to shift unfairly the USF funding burden away from interexchange carriers and towards CMRS carriers, each of the proposals also have additional individual flaws. The "modified CoSUS" proposal, for instance, lacks any explanation or rational basis for its proposed initial per connection fee at $1.00 per line per month on residential lines and CMRS units. Its minimum one percent assessment on annual interstate revenues for interexchange carriers that lack end user connections is similarly unjustified. Second, large business customers would fund USF only on a "residual" basis, violating Section 254. Third, the modified CoSUS proposal would inevitably assess intrastate telecommunications revenues, which would ultimately lead to assessments of federal and state USF on the same revenue/connection.

The modified SBC/BellSouth proposal, which splits connection-based contribution assessments between switched access and interstate transport providers, contains similar defects and is a variation on the same basic theme. Especially troublesome, however, is the double assessment imposed on CMRS carriers. The modified SBC/BellSouth proposal would assess wireless carriers twice (once for wireless transport and once for a wireless connection), while other carriers would be assessed only once. Such inequitable assessment ratios also ignore the economic losses that arise from a failure to consider elasticity of demand, violating Section 254.

The telephone numbers-based proposal also would not assess interexchange carriers for USF in any meaningful way. Indeed, IXCs do not utilize telephone numbers in a manner that would be captured under current industry standards. Just as significantly, the numbers-based proposal would exempt broadband service providers, who do not use telephone numbers in their provision of service, from any USF contribution obligation. This would leave only ILECs, the few remaining CLECs and CMRS carriers to bear the entire USF funding burden and would be wholly inequitable. Indeed, if the Commission's goal in structuring the USF contribution mechanism is to provide special consideration to those that have contributed to the advancement of competition and competitive facilities investment, as certain cable operators and broadband interests have argued, then CMRS carriers should receive the majority of that special consideration and should not be forced to bear the brunt of the funding burden.

The Commission proposes setting forth guidelines for CMRS carriers to follow in estimating their interstate telecommunications revenues or traffic. The Commission should be realistic, given the variety of CMRS networks and billing systems, about how much of an "apples to apples" comparison can easily be made. The Commission must provide as much flexibility as possible and not make the mistake of assuming capability on the part of CMRS carriers to track and record individual customer's usage. Wireless carriers should continue to utilize total minutes of use as a proxy for end-user revenues, including both outgoing and incoming calls, as well as roaming and outbound international minutes in their wireless traffic studies. The Commission should not, however, mandate use of the originating cell site and the terminating area code or NPA-NXX of a call to approximate the jurisdictional nature of airtime minutes. The traffic studies that Nextel has undertaken in response to the Commission's upward revision of the wireless safe harbor rely on a different origination proxy. This is due to the present configuration of Nextel's billing software. The Commission should not force Nextel to undertake a massive billing system overhaul that would have no purpose other than to add to the costs associated with USF assessment program.

The Commission can take steps in this next phase of the proceeding to inject economic efficiency and rationality into the USF assessment process. To do this, the Commission must evaluate and fully understand the differences faced by industry segments with respect to the differences in the overall level of fees, assessments and taxes imposed on each type of carrier, the differences in demand elasticity for their services and the differences in marginal costs in each segment. There should be no rush to mandate any arbitrary and unproven changes to USF assessments on the heels of the Commission's just-adopted interim measures.

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NEXTEL DECEMBER 2002 *EX PARTE* .... Attachment A

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COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby submits these comments in response to the Federal Communications Commission's ("Commission") Second

Further Notice of Proposed Rulemaking regarding proposed long-term modifications to the revenue-based universal service fund ("USF") contribution methodology.[1]

Nextel is a Commercial Mobile Radio Service ("CMRS") provider with approximately ten million customers throughout the United States. As one of six facilities-based CMRS carriers offering "nationwide" wireless service, Nextel has been a mandatory contributor to the federal USF program since 1997.[2] As the Commission has stated repeatedly, the CMRS market is intensely competitive and CMRS is a major success story for the Commission's competition, consumer choice and rate deregulation policies. Despite this public policy success, the CMRS industry has been profoundly affected by the souring of the capital markets on the prospects of wireless carriers becoming profitable in the short run. Commission mandates, such as the funding of location-based E-911 service, wireless number portability and USF, have an inevitable detrimental effect on each CMRS carrier's bottom line, as well as on their ability to compete with wireline carriers, to attract capital and to grow their networks and develop new services.

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[1] Federal-State Joint Board on Universal Service et al., *Report and Order and Second Further Notice of Proposed Rulemaking,* CC Docket No. 96-45, FCC 02-329 (rel. December 13, 2002) ("Report and Order" and "Second FNPRM" or "FNPRM"). Based on the record, the Commission determined that the radical contribution-based changes proposed – which would alter the very basis of the contribution methodology – had not been fully fleshed out. Instead, the Commission took several steps it characterized as "interim" in nature and is now seeking additional comment on connection-based assessment schemes. Specifically, the Commission increased from 15 percent to 28.5 percent the safe harbor wireless carriers may use to estimate their interstate end user revenues. The Commission also required wireless carriers to make a single election whether to report "actual" revenues or to use the revised safe harbor for all affiliated entities within the same safe harbor category. In addition, the Commission prohibited CMRS carriers from recovering their federal universal service contribution costs through a separate line item that includes any mark-up above the relevant contribution factor. *See* discussion *infra* at pp. 23-24 (discussing these measures in greater detail and the costs associated with their implementation).

[2] Nextel's contributions to the federal USF have more than quadrupled over the last five years as the applicable contribution factors have risen and as Nextel's revenues and subscriber base have grown.

As Nextel has demonstrated in *ex parte* filings to the Commission, funding mandates that are applied uniformly to distinct parts of the telecommunications industry that have very different competitive dynamics and very different elasticities of demand for their services distort competition.[3] The Commission cannot afford to turn a blind eye in this phase of the proceeding to this basic and demonstrated economic fact. The challenge for the Commission is to raise the necessary revenue in a manner that minimizes the economic disincentives and welfare losses to both consumers and telecommunications carriers. Any further change to USF assessment methodologies that fails to factor in the elasticity of demand effect on the quantity of service consumers will purchase from competitive sources will be fatally flawed from both a legal and public policy perspective.

I. INTRODUCTION

The Second FNPRM requests comment on whether the "interim" changes to the USF assessment methodology adopted in the Report and Order will ensure the long-term viability of universal service support or whether the Commission instead should move towards one of three featured "connection-based" proposals.[4] As explained herein, any connection-based assessment would require a sweeping set of unwarranted new changes to the rules the Commission just adopted. CMRS carriers are already scrambling to modify their USF cost recovery processes

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[3] *See* Letter to Michael K. Powell, Chairman of the Federal Communications Commission, from Leonard J. Kennedy, Senior Vice President and General Counsel for Nextel Communications, Inc. and Lawrence R. Krevor, Vice President, Government Affairs for Nextel Communications Inc., at 1-2 (filed December 4, 2002) ("Nextel December 2002 *Ex Parte*"). For the Commission's convenience, this *ex parte* filing is attached to these comments.

[4] In particular, the Commission asked commenters "to discuss whether the changes to the revenue-based methodology adopted . . . are sufficient to ensure the long-term viability of universal service as the telecommunications marketplace evolves, [or whether] . . . a connection-based mechanism may be the best alternative to ensure the long-term viability of the Commission's universal service mechanisms." Second FNPRM at ¶¶ 67-69.

and revamp end user billing methods to conform to rules that fundamentally fly in the face of their rate deregulated status.[5]

Any further changes of the sort proposed in the FNPRM would radically shift USF funding burdens among distinct classes of contributors within the overall USF contributor pool. This radical shift would not occur due to any reasoned decision making by the Commission that Section 254 of the Communications Act, as amended, requires that USF funding burdens be redistributed on a broad scale. Nor would the shift be due to any analysis of the costs to implement these proposals rather than the benefits to be gained by them. Rather, any such shift would be the end product of a result-oriented analysis that favors certain industry segments at the expense of others.

The FNPRM's connection-based proposals would, in most cases, have carriers apply USF assessments to their end user customers on a non-traffic sensitive basis -- the very opposite of the proscriptive cost recovery rule the Commission just applied on an "interim" basis in its Report and Order.[6] There is no reason to think that connection-based proxies are superior to

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[5] Even incumbent LECs and interexchange carriers have petitioned the Commission for waivers of the April 1, 2003 deadline to implement harshly prescriptive cost recovery on USF line items, citing the impossibility of revamping well established billing systems and practices within a three month period. *See* Petition for Interim Waiver filed by the Verizon Telephone Companies, SBC Communications, Inc., and BellSouth Corporation, at 1, filed on February 6, 2003 (requesting the Commission to "preserve the *status quo* in connection with Centrex service, pending action on recently filed requests for clarification, to allow them to average among multi-line business customers the reductions in the charges to Centrex permitted under the 'equivalency ratio' referenced in section 54.158 of the Commission's rules."); AT&T Petition for Interim, Limited Waiver, at 2, filed on February 12, 2003 (requesting a limited waiver from Section 54.712(a) pending disposition of AT&T's Petition for Expedited Reconsideration and Clarification because "AT&T does not have the ability in all cases to implement selective, geographically deaveraged service rates or separate non-USF line-items by April [1], 2003, the effective date of the *Interim USF Order*.").

[6] There is some irony that the Commission now is proposing non-traffic sensitive, connection-based proxies, while in the Report and Order, carriers were directed to stop charging USF flat fee line items that were unrelated to a customer's actual usage. In fact, each of the connection-based proposals is

usage sensitive forms of cost recovery from the vantage of economic efficiency. Further, as explained herein, this change and others would create massive problems for carriers, who, having just educated customers about the switch to a proscriptive, usage sensitive line item for USF cost recovery, must then switch to yet another form of USF line item cost recovery entirely divorced from usage on any line (or any mobile phone unit) in any given month. A succession of regulatory changes would cascade into a series of customer line item changes, adding costs on carriers and creating unnecessary confusion for consumers.[7]

The Commission ignores this as an important decisional factor in its evaluation of connection-based proposals. The company-specific resources, effort and raw expense created by going back and revising internal company billing and other systems is, however, significant. Customers must be notified of changes and there is a demonstrable jump in the customer care costs associated with any change in a rate structure. Thus, the Commission has a high threshold to demonstrate how the public interest would be served by requiring carriers to implement a second, extensive set of USF cost recovery changes on the heels of an initial set of expensive changes. In this period of economic malaise in the telecommunications industry, the Commission ought to strive to minimize the adverse economic effect of regulation on carriers and customers.

Beyond the issues of wasteful churn and unwarranted shifting of cost burdens on distinct segments of the industry, there are fundamental unresolved issues of fairness, as well as regulatory flaws with the connection-based proposals that must be faced and addressed. For

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fundamentally a levy made regardless of actual customer usage of interstate telecommunications services in a given month.

[7] The Commission should minimize mandates that engender customer confusion, which, in turn, increases churn and customer dissatisfaction.

instance, each of the connection-based proposals are essentially one dimensional, because as presented, they fail to account for the economic costs to both consumers and carriers due to the differences in elasticity of demand for service that different industry segments face. Thus, they fail to maintain any semblance of true competitive neutrality. They are also arbitrary, as not one of the three proposals as presented in the FNPRM has established that the proposed unit charge, whether it is to be based on a telephone number, a line, or a mobile unit, is set at any level that even remotely reflects the relative contributions of carriers under the present revenue-based system. This is significant, as the interstate and international revenue-based assessment system has been confirmed by courts as an appropriate assessment method, fully consistent with the statutory guidance provided in Section 254.[8] Furthermore, each of the connection-based proposals is inconsistent with the Act's requirement that all carriers contribute to the fund on a nondiscriminatory basis.[9]

Going forward, the Commission must first evaluate and understand fully the differences faced by the industry segments with respect to the differences in the overall level of fees, assessments and taxes imposed on each type of carrier, the differences in demand elasticity for their services; and the differences in marginal costs associated with each industry segment.[10] These must be analyzed before making a radical departure from the revenue-based contribution methodology and interim measures that carriers have begun to implement. There should be no

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[8] *See, e.g.*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) ("*Texas Office of Public Utility Counsel*").

[9] This is not to say Nextel would never under any circumstances support a connection-based approach, merely that the three presented in the FNPRM, in their present form, are arbitrary and inconsistent with the established requirements of Section 254.

[10] Taxes, fees and assessments, or TFAs, are the same from an economic point of view – they increase price and thus lead to lower consumer demand, particularly when demand for a service is more elastic.

rush to mandate costly, arbitrary and unproven changes to the USF contribution methodology on the heels of the Commission's interim measures. Rather, the Commission must take the time to allow the interim measures to be shown to be effective or some other method proved to be equitable and nondiscriminatory in all material respects before carriers are forced to make further drastic and costly changes to the billing systems and procedures to accommodate new forms of USF assessments on carriers and their end users.

II. EACH OF THE FEATURED CONNECTION-BASED PROPOSALS IS A FLAWED OR INCOMPLETE SOLUTION TO THE USF FUNDING CHALLENGE.

While it is conceivable that some form of connection-based assessment could be a rational outcome, none of the three connection-based proposals presented in the FNPRM represent an adequate or fair modification of current USF assessment policies. The first proposal would impose a minimum contribution obligation on all interstate telecommunications carriers, and a flat charge for each end-user connection, depending on the nature or capacity of the connection. The second proposal would assess all connections based purely on capacity (without regard to distinctions between residential/single-line business and multi-line business connections), and share contribution obligations for each switched end-user connection between access and transport providers. The third proposal would assess providers of switched connections based on their number of assigned and working telephone numbers.

The connection-based proposals contained in the FNPRM, moreover, do not and cannot ensure the long-term stability and sufficiency of the USF program. While the main attraction of connection-based proposals is that "connections" tend to fluctuate less than revenues, there is no strong evidence that that in fact is the case. All of the featured connection plans share the same fundamental flaws, *i.e.*, they assume a compelling need for radical change where no such need has been demonstrated; they impose further implementation costs on carriers beyond those required in the interim program and would create additional confusion for customers; and they utterly fail to account for the differing economic costs to consumers and providers associated with the elasticity of demand for service among providers of local exchange, CMRS and interexchange services. Furthermore, by micro-engineering each aspect of the connection unit assessments, each of the featured proposals arbitrarily discriminate disproportionately in favor of one industry segment and each is thus inconsistent with the Act's requirement that all carriers contribute to universal service on an equitable and nondiscriminatory basis.[11] This process should not be about which industry segments can cut the best deal with the regulator; rather the end result of any USF assessment reform should be an economically rational, broad-based and sustainable method of assessment achieved at the lowest possible cost to consumers and to carriers.

Since the Commission began its review of the USF contribution methodology in May 2001,[12] Nextel, along with numerous other carriers, has consistently urged the Commission to move cautiously in efforts to revamp the assessment basis. Indeed, many carriers opposed the connection-based proposals which, if adopted, would relegate the burden of universal service recovery in a non-competitively neutral manner away from services with relatively low elasticity of demand, such as landline local exchange service, and towards services with relatively high

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[11] 47 U.S.C. § 254(b)(4).

[12] *See* Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource

elasticity of demand, such as CMRS.[13] Indeed, since first proposed by the Coalition for Sustainable Universal Service ("CoSUS"), each connection-based proposal has as an apparent core objective that of shifting the USF obligations away from interexchange carriers and their multiline business users and towards CMRS carriers, and ultimately CMRS customers. Nothing new has happened to make the featured connection-based proposals less discriminatory – they still shift the lion's share of the USF funding burden from interexchange carriers to CMRS carriers (and potentially LECs) without any demonstration of need or of changed circumstances or, for that matter, any consideration of the effects on demand for services that exhibit highly differentiated elasticities of demand.

Merely shifting the funding burden onto wireless carriers will result in an increase in prices and a reduction in overall demand for wireless services, which in turn will result in substantial revenue losses. Such an increase in USF funding obligations will not only harm severely CMRS carriers' ability to compete in the telecommunications marketplace, it will create unnecessary strain on the economy, on telecommunications service consumers and on the telecommunications industry as a whole. Thus, rather than focusing on which of the three connection proposals is best, the Commission must consider the larger picture of whether any of these proposals will serve the stated purpose of guaranteeing the long-term stability and sufficiency of the universal service support system and what other measures, if any, could be

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Optimization, Telephone Number Portability, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, *Notice of Proposed Rulemaking*, 16 FCC Rcd 9892, 9894-96 (2001) ("2001 Notice").

[13] *See, e.g.,* Comments of Nextel Communications on the Further Notice of Proposed Rulemaking at 2 (filed April 22, 2002) ("Nextel FNPRM Comments"); Reply Comments of ACS on the Further Notice of Proposed Rulemaking at 8-9 (filed May 13, 2002); Reply Comments of Arch Wireless on the Further Notice of Proposed Rulemaking at 6 (filed May 13, 2002); Reply Comments of Verizon Wireless on the Further Notice of Proposed Rulemaking at 5 (filed May 13, 2002).

taken to achieve that goal in a non-discriminatory manner.[14] Nextel submits that the connection-based proposals are not ready for prime time.

A. **<u>$1.00/Per Connection – Modified CoSUS Proposal.</u>**

The Second FNPRM appropriately recognizes that the record needs further development "on aspects of certain proposals to assess universal service contributions on the number and capacity of connections." As such it seeks comment on the "potential impacts on contributors, and, ultimately, consumers," of each of the three connection-based proposals.[15] In particular the FNPRM first seeks comment on a contribution methodology that would impose a minimum contribution obligation on all interstate telecommunications carriers, and a flat charge for each end-user connection, depending on the nature or capacity of the connection.[16]

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[14] The Commission should recall that every time a USF subsidy has been wrung out of the interstate access charges IXCs pay, IXCs have benefited substantially. Yet, instead of paying a fair share of USF, IXCs (the carriers that rely on ILECs and actually use the supported ILEC loops for termination) now want the benefits of subsidy-free access charges, while at the same time transferring most of the continuing (and growing) USF funding burden to others.

[15] Second FNPRM at ¶ 72.

[16] This proposal was derived from a connection-based scheme first presented by CoSUS. *See* Comments of the Coalition for Sustainable Universal Service (filed April 22, 2002). Pursuant to the CoSUS proposal, universal service contributions would be paid according to a formula based on the number, type and capacity of connections the contributing entity provides to retail customers to connect those customers to a public network. Every interstate telecommunications carrier would be subject to the formula, and would contribute for all connections provided by that carrier between a retail customer's premises and a public network that are used to provide standalone interstate telecommunications or telecommunications services. For residential, single-line business and non-paging CMRS subscribers, the initial monthly assessment rate would be $1.00 per connection. Once this total amount is determined, the residual USF amount necessary to fund USF needs would be recouped on a capacity-charge basis. For switched multiline business, special access and private line would be recomputed into a tiered set of capacity charges. Unlike the CoSUS proposal, which contained three tiers to assess multi-line business connections based on capacity, the modified Commission proposal would add a fourth tier to "more equitably assess higher-bandwidth connections and reduce the impact of changing to a connection-based methodology on small multi-line business customers." The Commission does not explain why this fourth tier results in a more equitable assessment of USF contributions. Second FNPRM at ¶ 82.

Under this proposal, providers initially would be assessed $1.00 per month for each residential, single-line business, payphone, and mobile wireless connection.[17] Using a residual cost formula, multi-line business connections then would be assessed at varying amounts based on their classification into different tiers of capacity, at levels sufficient to cover the remaining funding requirements unrecovered by the $1.00 assessments. The capacity of a connection would be defined as the maximum capacity that the end user has ordered onto its premises in a given month, regardless of the facility used to provide that connection.

This "modified CoSUS" proposal is fundamentally flawed in several respects. For one, neither the Commission nor the proponents of the proposal provide any rational basis for the setting of the initial per connection fee at $1.00 per line per month. Indeed, there is no showing that $1.00 would be the "right" place to set residential and wireless phone unit monthly USF charges, or that the capacity tiers represent the right cut-off points or even that the capacity charges are set high enough to ensure that large business users pay a reasonable portion of USF funding requirements. There simply is no analysis of why $1.00 per connection is the appropriate "going-in" figure, or whether this $1.00 monthly flat fee will serve to improve the stability of the current USF funding mechanism.

Second, the modified CoSUS proposal is not equitable and non-discriminatory as required by the Act. As presented in the FNPRM, the proposal distinguishes residential wireline and all mobile wireless connections, which are assessed a flat fee, from multi-line business connections, which are assessed on a capacity tier/ratio basis.[18] As highlighted by the Ad Hoc

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[17] Paging operators would pay $0.10 and $0.20 per month, respectively, for each one-way and two-way pager connection.

[18] All wireless mobile units would be assessed a $1.00 monthly fee comparable to the proposed $1.00 assessment on each landline residential line.

Telecommunications Users Committee's initial strong support for this proposal, large business customers would benefit considerably from the institution of this proposal. As previously noted, multi-line business USF payment obligations would be set on a "residual" basis – once each CMRS/residential and single line business connection already was assessed $1 monthly. This capacity and residual approach represents an as yet totally unjustified windfall to multi-line businesses at the expense of households, wireless service consumers and small businesses.

Furthermore, the capacity tier/ratio connection proposal would allow IXCs that do not connect directly to end users to avoid nearly any federal universal service contribution obligations. Section 254(d), however, requires that "*every* telecommunications carrier contribute to the universal service fund. . . ."[19] Perhaps recognizing this flaw in the proposal, the Commission, in an apparent attempt to recapture in some limited way the lost IXC contributions, proposes to apply a "minimum" contribution factor of 1%. Thus, "[i]f a telecommunications provider reports annual interstate telecommunications revenues greater than or equal to $100,000, regardless of whether it provides connections, it would be subject to a minimum total annual contribution obligation equal to a flat percentage of its annual interstate telecommunications revenues, such as, for example, one percent."[20] Like the proposed $1.00 per connection, however, there is no indication or showing that a one percent assessment on annual interstate revenues is in any way equitable as compared to other contributor classes.[21] Arbitrary and untested assessment factors that shift the majority of the funding burden away from IXCs

[19] 47 U.S.C. § 254(d).

[20] Second FNPRM at ¶ 78.

[21] As compared to the current effective assessment rate of 7.28%, one percent appears to be a paltry contribution to expect from interexchange carriers.

and large telecommunications users and onto other classes of service providers, including CMRS providers, are not consistent with the requirements of Section 254.

Finally, the modified CoSUS connection-based assessment, if implemented, would also amount to an illegal assessment on intrastate revenues prohibited by the *Texas PUC* case. A per-connection approach is necessarily based on intrastate usage because it assesses *all* connections to the network, including those that have no interstate usage. This approach would indirectly and improperly lead to intrastate services funding federal universal service. A federal USF program that assesses intrastate revenues would not only be contrary to the Act,[22] but would also inevitably lead to a double taxation problem, *i.e.*, carriers could easily be assessed twice on their intrastate revenues, by both the states and the federal government. With the telecommunications industry struggling to recover from the current economic downturn, the Commission must avoid the possibility of multiple jurisdictions effectively assessing what could be well over 100 percent of a carrier's revenues.

B. **The SBC/BellSouth Proposal.**

The Commission also seeks "comment on the benefits and drawbacks of a system that would split connection-based contribution assessments between switched access and interstate transport providers, would assess access providers for non-switched connections, and would

[22] The Fifth Circuit decision confirms this analysis. There, the court determined that the Commission was prohibited under Section 2(b) of the Telecommunications Act from assessing federal universal service contribution obligations based on intrastate revenues. In particular, the court concluded that "inclusion of intrastate revenues in the calculation of universal service contributions constitutes a charge . . . in connection with intrastate communication service." *Texas Office of Public Utility Counsel*, 183 F.3d at 447. Therefore, the Court found that a federal USF assessment based on intrastate revenues violated Section 2(b). The Court also recognized that allowing the Commission to assess contributions based on intrastate revenues "could certainly affect carriers' business decisions on how much intrastate service to provide or what kind it can afford to provide" and concluded that "this type of federal influence over intrastate services is precisely the type of intervention that 2(b) is designed to prevent." *Id*. at n. 101.

assess interstate telecommunications services not directly tied to connections based on revenues."[23] The modified SBC/BellSouth proposal contains the same fatal flaws as the modified CoSUS proposal, and is essentially a variation on the same basic theme. It shifts a small portion of the funding burden back to interexchange carriers but has an even greater disproportionately adverse effect on CMRS carriers and their customers.

Indeed, the modified SBC/BellSouth proposal would assess wireless carriers twice (once for wireless transport and once for a wireless connection), while LECs and IXCs are assessed only once – making the proposal completely inequitable. As the Commission itself recognizes, "CMRS providers and wireline carriers that provide both local and interexchange services to the end user would be assessed two units per connection (one for access and one for transport), while a LEC that does not provide interexchange service would be assessed one unit, and the interexchange carrier serving the customer would be assessed one unit."[24] Not only is such a plan administratively impractical, it severely penalizes wireless carriers that, by the very nature of the service they provide, integrate transport and connection.

Furthermore, the switched access/interstate transport methodology features the same capacity tiers as the previous proposal. As with the modified CoSUS plan, however, the SBC/BellSouth plan is unsupported by any real quantitative or qualitative analysis to allow any independent assessment of the proposal's fairness and equity. Indeed, there is no explanation of how SBC/BellSouth arrived at their starting numbers, or how a proposal that requires CMRS providers to contribute at twice the rate of other carriers is consistent with Section 254. The

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[23] Second FNPRM at ¶ 86. This proposal is similar to that proposed by SBC/BellSouth, although The Commission does not propose at this time to directly assess information service providers. *See* Comments of SBC/BellSouth on the Further Notice of Proposed Rulemaking (filed April 22, 2002).

[24] Second FNPRM at ¶ 86.

proposal also, like CoSUS, begs the real question of USF funding sustainability by failing to bring broadband service providers into the assessment fold. As such, like the modified CoSUS proposal, the modified SBC/BellSouth proposal cannot be seriously evaluated, and thus cannot be implemented.

C. <u>The Numbers-Based Proposal.</u>

Finally, the Second FNPRM requests comment on a proposal that would assess USF fees on the basis of assigned and working telephone numbers a carrier may have. In particular, the Commission requests comment on a proposal submitted by Ad Hoc and supported by AT&T that would assess providers on the basis of telephone numbers assigned to end users (assigned numbers), while assessing special access and private lines that do not have assigned numbers on the basis of the capacity of those end-user connections.[25]

This proposal has flaws similar to the last two: it would not assess interexchange carriers in any meaningful way, because IXCs do not utilize telephone numbers that would be captured under current industry criteria.[26] Another significant flaw is that a numbers-based plan would explicitly hand a free pass to broadband providers – who do not use telephone numbers *at all* in their provision of telecommunications – from any contribution obligation in the future. A pure

[25] *See* Letter from James S. Blaszak, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Federal Communications Commission (filed Oct. 3, 2002) (asserting that the Commission should adopt a contribution assessment methodology based on working telephone numbers and connections-based assessments for special access and private lines); Letter from Robert W. Quinn, Jr., AT&T, to Marlene Dortch, Federal Communications Commission (filed Oct. 22, 2002).

[26] In fact, using industry guidelines for numbering, the toll-free numbers held by IXCs would be exempt from assessment.

numbers plan leaves only ILECs, the few remaining CLECs and CMRS carriers to fund all of USF, and would be an entirely inequitable and unstable contribution proxy.[27]

The Commission has listened carefully as cable operators and broadband interests have argued that they are critical to the growth and development of new technologies and the Internet. As such, they obviously support those USF funding approaches that would relieve them of paying any of the billions of dollars of the annual cost of the program.[28] They contend as new competitors it would weigh them down to support the cost of legacy public circuit switched networks. This is all well and good, but if the Commission's approach to the USF contribution methodology will now provide special consideration to those that have contributed to the advancement of competition and competitive facilities investment, then CMRS carriers ought to get the some, if not the majority of that special consideration. With its approximately 140 million subscribers grown over the last fifteen years and its cumulative estimated network investment of $118.5 billion (as of the end of 2002),[29] the CMRS industry is the last real hope for widespread, facilities-based competition to the ILECs.[30] As one commenter accurately stated "[n]ow is not the time for the FCC to undermine the[] competitive offerings [of CMRS providers] by gerrymandering the assessment methodology to provide a free ride to IXCs and

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[27] When viewed from an elasticity of demand perspective, as explained below, the proposal is downright anti-competitive.

[28] *See, e.g.*, Reply Comments of AOL Time Warner, Inc. on the Further Notice of Proposed Rulemaking at 3 (filed May 13, 2002).

[29] *See* http://www.wow-com.com/images/survey/june 2002/Annual_Table_slide_3.gif.

[30] While some cable companies, notably Cox Communications, have invested in and provide circuit switched residential telephone competition to ILECs, such competition is limited to a single cable operator in a single geographic area where the cable operator has constructed cable facilities. In contrast, multiple CMRS carriers have invested in and provide full facilities-based competition in many markets; there are five or more CMRS providers in the majority of markets in the United States.

competing providers of access to the Internet."[31] A numbers-based plan is not an equitable fix for USF reform.

Finally, the Commission asks several pointed questions apparently intended to highlight the virtues of a numbers-based approach. First, the FNPRM asks whether such a plan "might encourage public policy goals such as the conservation and optimization of existing telephone number resources."[32] Nextel submits that the Commission already has in place grueling requirements on all carriers for numbering utilization; there is no added public benefit to be gained from adopting a numbers-based assessment for universal service purposes.[33] Second, the FNPRM asks whether, as a legal matter, the Commission is on firmer ground than with other connection-based plans.[34] While this proposal's advocates claim that the Commission's plenary authority over numbering somehow prevents an illegal assessment of intrastate revenues, use of numbering resources as a USF assessment proxy fails to prevent any of the double taxation that could result with either of the other featured plans.

The most bizarre request for comment on the proposal is whether it would be appropriate "to assign lower telephone number-based assessment rates to local exchange carriers that do not participate in 1,000 block number pooling."[35] Not only would any "price break" for rural ILECs be unjustified, any such relief for rural ILECs from USF funding obligations would totally undercut the purported public policy benefit of using assigned numbers to encourage number

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[31] Comments of Verizon Wireless on the Further Notice of Proposed Rulemaking at 12 (filed April 22, 2002).

[32] Second FNPRM at ¶ 96.

[33] *See* Section 52.15(h) of the Commission's rules addressing minimum number utilization thresholds.

[34] Second FNPRM at ¶ 96.

[35] *Id*. at ¶ 97.

conservation.[36] All in all, the numbers-based proposal offers no easy or fair solution to the Commission's long term USF funding challenge.

III. ANY NEW PROGRAM MUST ACHIEVE USF GOALS AT THE LOWEST POSSIBLE COST TO CONSUMERS AND PROVIDERS.

The proposed connection-based methods of funding Universal Service are unnecessarily costly, ignore empirical evidence about telecommunications consumption and conflict with well established principles of public finance and welfare economics. Instead of imposing further competitive distortions on the telecommunications marketplace, the Commission should devise a program that will reduce the USF burdens on all carriers, one that will prevent cross-subsidization and the creation of regulations that favor specific industry segments. The FCC policy of recouping the USF subsidy from services that are sensitive to price fluctuation, has a measurable and negative effect on economic welfare of both consumers and operators. Up until now, the Commission has not examined nor taken into account the elasticity of consumer demand for services when considering the effects on carriers or the public of its USF assessments.[37]

On December 4, 2002, Nextel submitted to the Commission an *ex parte* presentation demonstrating the unintended and detrimental economic consequences that additional taxes, fees or assessments, or TFAs, have on carriers that operate in a highly competitive market.[38] Presenting preexisting economic studies, Nextel was able to show the critical impact that

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[36] *See, e.g.*, The Cellular Telecommunications and Internet Association's Petition for Forbearance from Further Increases in the Numbering Utilization Threshold, CC Docket No. 99-200 (filed June 28, 2002) (highlighting NANPA statistics that demonstrate the success of FCC conservation measures).

[37] The "elasticity of demand" is a well-known economic measure of how sensitive buyers are to changes in the price for a service. *See* Nextel December 2002 *Ex Parte* at Attachment (Economic Welfare Cost of Taxes, Fees and Assessments) page 13.

[38] Nextel December 2002 *Ex Parte*.

Commission regulation can have on the economic durability of competitive carriers. From these models it is evident that the cost of mandated assessments, even when applied equally to all carriers, will be far more severe and will hurt the demand for wireless service much more than the assessments would for services that are less elastically demanded, such as basic local exchange service.

Increases in the levels of USF assessments on all carriers on the *same basis* thus creates severe distortion in any competitive telecommunications market.[39] All telecommunications carriers are not created equal and the burdens of funding USF and other mandatory programs do not fall evenly on every carrier class. Nextel has shown, for example, that demand for wireless service is very elastic, meaning that an increase in price of wireless service due to increasing TFAs results in a quantifiable decrease in consumer demand.[40] This price elasticity of demand of wireless service has been and continues to increase, with new wireless subscribers likely to be more price sensitive users who choose lower priced service plans.[41] In sharp contrast, only a very small number of local landline subscribers cut off service or alter existing service when local landline TFAs increase demand for LEC service, which is highly *inelastic*. Any Commission decision relating to the way in which USF is funded will necessarily have significant implications on the economic welfare of carriers and their customers. Indeed, the failure to take elasticity of consumer demand for services into account when allocating USF

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[39] *See* Nextel December 2002 *Ex Parte*; Nextel FNPRM Comments at 23 ("Regulation and government fee collection programs should not force every company to wear the same shoe -- not all companies have the same foot size.").

[40] *See* Nextel December 2002 *Ex Parte* at Attachment (Impact of Universal Service Reform on the Wireless Industry) page 2.

[41] *Id*. at Attachment (Impact of Universal Service Reform on the Wireless Industry) page 8.

program burdens creates additional, unnecessary deficits on the nation's economy, on consumers and on the telecommunications industry as a whole.[42]

Moreover, the failure to account for the differing economic welfare costs associated with the differing elasticities of demand for various services violates the Commission's requirement to collect USF contributions in an "equitable and non-discriminatory" manner, because it forces one industry segment – the wireless industry – to bear the brunt of the USF funding burden. Pursuant to Section 245(d): "Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an *equitable and nondiscriminatory* basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[43] Contrary to this mandate, the connection-based proposals require that some carriers, *i.e.*, those that have the majority of "connections" to end users, shoulder a disproportionate portion of the USF funding burden as compared to other industry segments. Assessing only some carriers USF fees, or doubling the funding burden on industry segments that display the highest elasticities of demand will further distort competition, skew investment incentives and change the types of services that carriers seek to offer based solely on USF contribution assessment avoidance. Such result is contrary to the Act.

The Commission must, therefore, consider elasticity of demand when deciding if, and how, it should fundamentally change the current revenue-based USF contribution methodology. Implementing a program change that appropriately makes elasticity-of-demand distinctions will not require a major overhaul of the existing revenue-based USF assessment approach, and passes

[42] *Id*. at Attachment (Impact of Universal Service Reform on the Wireless Industry) page 9 (noting that "The relative high elasticity of demand and the high total taxes, fees and assessments on the wireless bill result in high average economic welfare (*i.e.*, efficiency) losses.").

[43] 47 U.S.C. § 254(d) (emphasis added).

muster under Section 254(d)'s "equitable and non-discriminatory" requirement. For one, it would maintain the existing revenue-based mechanism and would not require carriers to undertake significant network modifications or billing system changes. Second, a program that takes into account the relative elasticities of demand of the various industry segments will undoubtedly eliminate the possibility of economic market distortion where one industry segment is forced to absorb double or triple the assessment amount as compared to the others. Only when the economic effect of these assessments are reflected in the USF funding mechanism can the requirements of Section 254(d) be satisfied.

Once elasticity of demand for services is considered, it is plain that the best and least distortive social policy is to set assessments in a manner that the most inelastic services pay a greater proportion of the total funding needs. Only then, when such proposal is adopted and subsequently implemented, will the Commission be able to minimize the distorting effect of USF assessment increases and ensure that consumers are not choosing carriers or making service decisions based solely on the effective USF assessment rate each carrier pays into the fund to support USF.

IV. THE INTERIM MEASURES SHOULD BE GIVEN A REASONABLE AMOUNT OF TIME TO WORK BEFORE ANOTHER RADICAL CHANGE IS MADE.

The Second NPRM requests comment on "specific measures the Commission could take to ensure that a connection-based contribution methodology would be consistent with the Act."[44] The only appropriate measure at this time is to stay the course, allow the interim measures to work and ensure that all consequences are considered before changing the process because the cost of compliance at each stage of change is considerable. Indeed, the Report and Order adopts

[44] Second NPRM at ¶ 72.

significant interim measures largely targeted at shifting to CMRS and other carriers a portion of the USF obligations now paid by IXCs. To start, the Commission nearly doubled the wireless safe harbor to 28.5% from 15% by setting as the safe harbor for all CMRS carriers the highest interstate estimate furnished by the industry.[45] If CMRS carriers cannot sample or measure their traffic and use the results as a reasonable proxy to estimate interstate revenues, then they must use this sharply higher safe harbor.

In addition, the Commission modified the existing revenue-based methodology to require contributions based on contributor-provided projections of collected end-user interstate and international telecommunications revenues, instead of historical gross-billed revenues.[46] The Commission's process will include truing up projections against actual carrier operating results. The Commission also engaged in ratemaking for unregulated carriers, including CMRS carriers, by tightly prescribing permissible cost recovery (both form and substance) for USF line items. Specifically, the Commission concluded that telecommunications carriers may not recover their federal universal service contribution costs through a separate line item that includes any mark-up above the relevant contribution factor beginning April 1, 2003.[47]

The costs of implementing the "interim" measures adopted in the Report and Order are significant and should not be overlooked by the Commission as a factor in determining whether further changes should be implemented. Indeed, carriers must expend substantial resources to implement the Commission's prescriptive new billing structure for the USF line item "pass

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[45] CTIA offered a range of CMRS carrier estimates of interstate minutes of use that began at a low of 10% and rose to 28.5%. Report and Order at ¶ 21.

[46] *Id.* at ¶ 29.

[47] *Id*. at ¶ 45. Nextel filed a Petition for Reconsideration on this unjustified and unlawful rate prescription and other issues. *See* Nextel Petition for Reconsideration or Clarification, CC Docket No. 96-45, *et al*. (filed January 29, 2003).

through," as well as to shift to an "actuals" approach for assessing end-user revenues, rather than continued reliance on the administratively simple wireless safe harbor. As one commenter noted, the new measures will involve[] complex software changes to multiple billing systems and costly, repeated notifications to customers."[48] The new mark-up restriction alone will require many carriers to modify drastically their billing practices, and to incur additional administrative costs associated with USF collection from end users that cannot be recovered through the newly-constrained USF line item.

On a practical level, CMRS carriers face unique burdens in revising their billing structures, customer management and internal procedures. Nextel, for example, only very recently developed its own internal capability of measuring traffic on a "jurisdictional" basis. Nextel will have to judge whether its results are robust enough to be used as a company specific proxy, or whether it will have to use the 28.5% safe harbor to calculate USF contributions, while other CMRS carriers without the capability of measuring traffic will be forced to use the admittedly high estimate of interstate use the Commission just adopted. Moreover, the change in USF contribution calculations to company-specific estimates or to the new, far higher safe harbor will cause CMRS carriers to incur considerable administrative and implementation expenses associated with sending end user customers notifications and bill inserts, and with the increased number of customer care inquiries and complaints due to the changes in the USF line item format and amount.

These added costs, in addition to the demonstrated flaws in the proposed connection-based methodologies, support restraint in adopting any one of the proposed "connection-based"

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[48] *See* Petition for Reconsideration filed by Verizon Wireless, CC Docket No. 96-45, *et al*. at 4 (Filed January 29, 2003).

methodologies in the near-term. Should the Commission revise the methodology once more in the near-term, carriers will be required to once again change their billing formats and line items, as well as the method of calculating their contribution levels. These continued modifications will not only cause carriers to expend considerable capital resources, but will cause unnecessary customer confusion, not to mention complaints and the increased risk of class action lawsuits. The better solution would be to maintain the current assessment mechanism and take reasonable steps to limit the growth of the funding requirement while studying feasible, predictable means to modify assessments so that they reflect the elasticity of demand of the particular service to which they are being applied.

V. IN THE ABSENCE OF A COMPETITIVELY-NEUTRAL ALTERNATIVE, A REVENUES-BASED ASSESSMENT SHOULD BE MAINTAINED.

The Commission seeks comment on whether the interim changes adopted to the revenue-based methodology are sufficient to ensure the long-term viability of universal service as the telecommunications marketplace continues to evolve.[49] As demonstrated above, the Commission must permit carriers enough time to implement the interim changes before the results of such changes can be judged, or other wholesale overhauls of the existing revenue-based methodology are implemented.

In the meantime, however, if the Commission seeks to give guidance or to adopt rules addressing how CMRS carriers ought to estimate their interstate telecommunications revenues or traffic, the Commission should be as flexible as possible in its adopted assumptions/proxies for wireless providers. Some CMRS carriers may have easy access to particular customer data records, while others do not. In an unregulated market, CMRS carriers did not invest in the same

[49] Second FNPRM at ¶ 67.

billing systems and do not get access to the same records at the same time. Some may have a variety of inconsistent billing data platforms, reflecting the fragmented licensing schemes of the CMRS past. To avoid competitive skewing, the Commission ought to determine the attributes common to all CMRS carriers reporting on "actuals" by estimating interstate airtime minutes and use those as its baseline if it deems guidelines truly to be necessary. Further, the Commission should not make choices in proxies/assumptions that impose additional costs unrelated to the CMRS business. Rather, CMRS carriers should be permitted to use what is already generated by their systems. Otherwise, similar to the stated needs of the other carriers, the CMRS industry must be given a long lead time and the ability to recover in USF line items the costs of USF-specific software and billing development work required to meet the Commission's mandates.[50]

It would be a bad public policy result if the Commission seeks overly specific traffic measurements. Indeed, CMRS carriers, offer bucket or basket of minute calling plans that are hugely popular but do not measure each subscriber's actual use of minutes on a jurisdictional basis. The CMRS industry has succeeded in the consumer market because CMRS carriers have to be responsive to market demands or lose customers. CMRS carriers should never be forced to be like the IXCs who, by virtue of the business that they are in, can assess federal USF on the actual volume of a particular customer's interstate calls in a given billing cycle. ***USF assessment methodologies should never require carriers operating in competitive markets to transform the way they do business.*** Thus, while Nextel understands the value of CMRS

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[50] *See* Letter to Magalie Roman Salas, Secretary for the Federal Communications Commission, from Patrick H. Merrick, Esq., Director of Regulatory Affairs for AT&T Corp., at Attachment page 1 (filed November 7, 2001) (announcing a change in AT&T's view of its ability to quickly implement the CoSUS connection-based plan: "[d]uring a 12-month interim period connection providers would develop the systems they need for capacity-based assessments on multiline business switched and private line/special access connections. . . .").

carriers using reasonably comparable assumptions to develop interstate estimates, some reasonable flexibility to accommodate true differences in carrier's systems should be maintained.

In addition to the general question whether a revenue-based system should be retained, the Commission seeks comment on how, in the absence of a safe harbor, wireless carriers should determine their actual interstate end-user telecommunications revenues. In particular, the Commission requests comment on whether minutes of use is an appropriate proxy for determining interstate revenues for mobile wireless providers, whether the originating cell site and the terminating area code or NPA of a call reasonably approximates the jurisdictional nature of traffic for reporting purposes and whether it would be appropriate to include both outgoing and incoming calls in mobile wireless provider traffic studies, as well as roaming and international minutes.[51]

Nextel supports using minutes of use as a reasonable proxy of a wireless carrier's interstate end-user revenues. Nextel also believes that CMRS carriers, to the extent their current systems and software can accommodate it, should include both outgoing and incoming calls, as well as roaming and outbound international minutes in their wireless traffic studies. This is the approach Nextel currently uses and is a logical method for wireless carriers to use in making their interstate traffic determinations.

Nextel does not believe, however, that the Commission should mandate use of the originating cell site and the terminating area code or NPA-NXX of a call to approximate the jurisdictional nature of airtime minutes. Currently, to estimate the jurisdiction of an airtime minute, Nextel's systems capture and can analyze the originating and terminating NPA-NXX of

[51] Second FNPRM at ¶ 68.

the calling and called parties. Any mechanism employed by the Commission that would require Nextel or other wireless carriers to use the originating cell site rather than the NPA would require a massive billing system overhaul that would take time and be costly to implement. If a standard approach is required, Nextel thus urges the Commission to allow use of the originating and terminating NPAs, which is a practical and reasonable way to estimate the jurisdictional nature of airtime calling minutes.

VI. CONCLUSION

The connection-based plans will likely impose high economic and social costs compared to the costs that would be incurred under alternative policies. These costs are unnecessary to achieve the goals embodied in the Universal Service provision and they undermine rather than advance the statutory "public interest" criteria that guides the Commission's regulatory decision making. The FCC could implement a more efficient policy without impairing the goals of the Universal Service program.

Parties seeking adoption of connection-based plans have a burden to bear to prove that they can be fair and that they do not further exacerbate the inequity of a mechanism that currently ignores the economic welfare costs due to the relative elasticity of demand for service in the various segments of the industries that fund the program. Absent such proof, the Commission should not move to a USF contribution methodology that upsets what the Commission just established on an interim basis.

Going forward, the Commission should take the opportunity to incorporate economic efficiency and rationality into the USF contribution mechanism. To do so, the Commission must assess and comprehend fully the differences faced by industry segments with respect to the disparities in the level of TFAs imposed on each type of carrier, the differences in demand elasticity for their services and the differences in marginal costs in each segment. There should be no rush to mandate arbitrary and unproven modifications to the USF contribution methodology in the wake of the Commission's just-adopted interim measures.

Respectfully submitted,

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<u>ATTACHMENT A</u>

Nextel December 2002 *Ex Parte*
(filed as a separate document herewith)